



Tasmanian Industrial Commission
Industrial Relations Act 1984

T No. 9027 of 2000

IN THE MATTER OF an application
by the Sandy Bay Caravan Park for
an interpretation of the Hotels,
Resorts, Hospitality and Motels
Award

Re: Clause 7, Division B - Food and
Beverage-Housekeeping

PRESIDENT LEARY

HOBART, 19 February 2001
Continued from 24 January 2001

TRANSCRIPT OF PROCEEDINGS

Unedited

(WOULD PARTIES PLEASE READ THIS TRANSCRIPT CAREFULLY)
(ANY QUERIES SHOULD BE DIRECTED TO THE COMMISSION WITHIN 14 DAYS)

HEARING RECOMMENCED 2.00pm

PRESIDENT: Could I take appearances, please.

MR B. DUTTON: President, my name is BRIAN DUTTON. I appear for the Sandy Bay Caravan Park. I'm a barrister and solicitor admitted to the Supreme Court of Tasmania and the High Court of Australia.

PRESIDENT: Are you acting as the owner of the caravan park or are you seeking leave to appear?

MR DUTTON: I am one of the partners owning the caravan park.

PRESIDENT: Okay. Thank you.

MR P. TULLGREN: My name is TULLGREN and I seek to appear on behalf of the Australian Liquor, Hospitality and Miscellaneous Workers Union.

PRESIDENT: That union being an interested party to the award?

MR TULLGREN: Yes, we have a registered interest in the award.

PRESIDENT: Thank you.

MR T.J. EDWARDS: If it please the commission, EDWARDS T.J., from the Tasmanian Chamber of Commerce and Industry. The TCCI are a party with an interest in all private sector awards of the Tasmanian Industrial Commission pursuant to section 63(10)(c) of the Act.

PRESIDENT: Thank you. Mr Dutton?

MR DUTTON: President, this application is for an interpretation of Para 7, Division B, general cleaning duties and whether such definition might cover the circumstances of a cleaner in a caravan park who cleans the cabins, units and on site vans including the en suites where provided and the amenity blocks.

President, the application arises from a finding by Mr Commissioner Imlach, which in my submission could only have been based upon a misapprehension of the functions of a modern caravan park.

PRESIDENT: What was the finding that you refer to? This was an opinion, I think, that he expressed, was it?

MR DUTTON: I'm sorry, I'm getting a bit old?

5 PRESIDENT: You're talking about a finding. What did Commissioner Imlach find, or was it a decision?

MR DUTTON: I understood - it wasn't a decision, no. It was a finding he made in the midst of a hearing. I understood it was on your file. I do have a copy here.

PRESIDENT: No. The file I have is your application.

10 MR DUTTON: I have a copy here.

PRESIDENT: Could I just have a quick look at that? I may have some - I don't know what status this letter has. It's not a decision or a finding. I think, at the highest, it could be an opinion that's been expressed, which is an unusual role for the commission to adopt, if I might say so.

MR DUTTON: Indeed, but in the midst of the hearing that was going on, the implications of that finding were somewhat dramatic, not just to my own operation but to all the caravan parks of Tasmania.

20 PRESIDENT: Yes. I think Commissioner Imlach was expressing an opinion but also saying that if it was to be an interpretation it had to go to the president. That was my understanding. I do recall reading the letter, yes. Because the president is the only person who is lucky enough to be able to do interpretations.

25 But never mind, what you're saying is you want an interpretation because you understand that that's an opinion that's been expressed and I take it, you disagree with it?

MR DUTTON: Indeed.

PRESIDENT: All right. Mr Edwards?

30 MR EDWARDS: President, I'm not privy to the correspondence that you have.

PRESIDENT: Sorry, you are or you aren't?

MR EDWARDS: I am not. I'm just wondering, in that context, whether it's something other parties to these proceedings ought

to be aware of. I understand you to say it's an opinion of one member of the commission and given the requirements of section 43, I would take the assumption, and you've told me many times not to assume things but I'm going to, that it has no bearing at all on these proceedings and it is no more than an opinion with no binding force.

PRESIDENT: That's my understanding of it. If it had any binding force, I imagine that it could have been appealed and there was no attempt to appeal it, as I understand it. Are you aware of this letter?

MR TULLGREN: No, I'm in the same boat as my friend, Mr Edwards.

PRESIDENT: All right. I'll make available copies to you. I'll let Mr Dutton proceed and then you can do what you wish with the letter. Thanks, Mr Dutton?

MR DUTTON: President, it's my submission that the award system is designed to set the parameters for payment in specified industries, thus, in the manufacturing industries where work and circumstances are set for certain times and finish at certain times. The awards rightly envisage additional payment over and above the normal longer hours of work or for return to work or for weekend and bank holiday work. Similarly, with retail industries and most other industries.

However, in the tourist accommodation industry no such hours may be dictated. Tourists, as people, require 24-hour service, 24-hour attendance and 24-hour, seven day a week, every day attendance. The awards covering the tourism and leisure industry therefore are cognisant of the need for a 24-hour coverage and do not dictate seriously penalising rates for tourism and leisure industries outside of normal working hours.

President, I submit that the Sandy Bay Caravan Park is a motel in all but name. The park has 16 self-contained cabins, three units and 16 on site vans. The only difference in the accommodation provided by the Sandy Bay Caravan Park as against any motel is that the accommodation itself is not brick built nor attached to the realty. In all other aspects, they are identical.

The cleaners duties are to clean and service the accommodation units. The beds are fully made up, the place is swept, hoovered, cleaned, or any washing up requiring done and put away and

washing up liquid, tea, coffee and milk and sugar provided. The only difference between this and a motel is that each unit is individual and not side by side as -

PRESIDENT: Stand alone, are they?

5 MR DUTTON: They stand alone units, not side by side or on a corridor or balcony as with a motel. The cleaners therefore have to carry necessary articles from unit to unit and they do this in a specially adapted small van.

10 Sandy Bay Caravan Park is a tourist resort only. There are no permanent residents. Accommodation is provided for short periods only and there are no accommodation structures on the park other than those owned by the applicants.

15 In these circumstances, president, I request that the view to be taken that the Sandy Bay Caravan Park cleaners' duties would come within the provisions arrived at for motels in the Hotels, Motels -

PRESIDENT: So which particular section of the award are you referring to?

MR DUTTON: Paragraph 7, Division B, Motels.

20 PRESIDENT: Division B, the Hospitality Services Grade 1 classification - is that the one that you say should be applicable?

MR DUTTON: Food, Beverages, Hospitality Services Grade 1, yes.

PRESIDENT: That's the classification?

25 MR DUTTON: Yes. The sixth paragraph down, general cleaning duties, is where I would claim that our cleaners fall within those provisions.

PRESIDENT: Is that all you wanted to put at this stage?

MR DUTTON: That's all I wish to put before you, president.

30 PRESIDENT: Mr Tullgren, would you like to go next?

MR TULLGREN: I would. I just might say this, we'll be seeking to oppose the application that's been made but before I commence I was just interested to know whether my friend, Mr Edwards, was going to make a submission in support of Mr

Dutton or against, or no submission at this stage because, clearly, if he's going to make a submission supporting Mr Dutton, it might be appropriate to hear him first.

5 PRESIDENT: Yes, if it's in support. I would have thought you'd be sitting in the middle of the bar table.

MR EDWARDS: I beg your pardon?

PRESIDENT: Never mind. Go on?

10 MR EDWARDS: I'm usually on the fence. President, our submission will be about the words in the award and what they mean, which my submission would be, is the proper way to approach an application pursuant to section 43. That matter has been extrapolated by an earlier decision of a former president of this commission, President Koerbin in T30 of 1985 which set out the 'rules' to be applied to matters of interpretation coming
15 before the commission. So whether my submission is in favour or against that of Mr Dutton is in many respects problematic. What I will try and do is take the commission to the words actually used in the award but for the benefit of my friend, I can also add that that submission will fall in favour of Mr Dutton's
20 submission, albeit from a different perspective.

If that means I should go next, I'm not unhappy to do that.

PRESIDENT: Perhaps that might be the best way to proceed and then that gives Mr Tullgren only one loaded gun to fire.

25 MR EDWARDS: I have no objection, president, to that course. Before I do commence, president, I'm just looking at the letter that's now been provided to us which is on Tasmanian Industrial Commission letterhead dated 11 May 2000 and signed by Commissioner Imlach. I probably don't think I need to go to that in any detail although I'd need to be guided on that point by
30 yourself. It seems to me that this is an expression of opinion by Commissioner Imlach in the context of an application which isn't clear to me although reading it, it would appear to relate to an application perhaps for underpayment of wages -

PRESIDENT: It would appear so.

35 MR EDWARDS: - against an award which doesn't appear to be stated. I assume one of the awards in question was the Hotels, Resorts, Hospitality and Motels and the other being the Miscellaneous Workers Award, if I can look at the second last paragraph of the first page of that letter.

PRESIDENT: Yes.

MR EDWARDS: Whilst I don't go to any detail on it and I don't think the opinion expressed by Commissioner Imlach has any standing in these proceedings, I would say with great respect to
5 my friend, Commissioner Imlach, he is of course quite wrong in his conclusions and there is some quantum leaps in reasoning involved in that letter which I don't intend to go to now because of the status of the correspondence.

My submission is that that letter, for the purposes of these
10 proceedings, ought to be stricken from the record. It is completely irrelevant.

PRESIDENT: It seems to me to be a little more than an opinion expressed, as one would express an opinion perhaps in a conciliation conference. It certainly has no legal standing. It's of
15 interest, no doubt to the parties but I don't think it has any relevance to these proceedings other than the fact that Mr Dutton is concerned about the expression, or the opinion that's been expressed there, which I take it is the reason for this application.

MR EDWARDS: I take it from that, president, if I could take
20 that half a step further and I'm just trying to clarify exactly what the status of the document is, that you would not be taking that correspondence into account in your deliberations in this matter?

PRESIDENT: The status of the document is, that it has no
25 status.

MR EDWARDS: I can ignore it then. I just feel uncomfortable
being in proceedings before this commission making
30 submissions about an opinion expressed by a commissioner which putting the most favourable light on it, is blatantly wrong. I don't want to say that on the record.

PRESIDENT: That's your view but it's not a relevant document
for these proceedings. If there's any status on it, it is similar to
35 an opinion expressed in a conciliation conference and that's usually where it stays.

MR EDWARDS: And therefore shouldn't be on ..[inaudible]..
Thank you, president.

President, as I indicated a moment ago, the proper principles to
be applied to these proceedings are those that are enunciated in

T30 of 1985, a decision by the then president of this commission, President Lloyd Koerbin.

5 So far as I'm aware, those matters that are outlined on pages 1 and 2 of that decision are the normal tenets of construction that would be used in interpreting an enactment such as an award of an administrative tribunal, such as the one that's before us today, and in essence, they say that the:

10 *Construction or interpretation of award provisions can only be made by considering their meaning in relation to specific facts. It is futile to attempt such an exercise in any other way.*

15 I just pause at that point, president, and indicate that the specific facts of this matter are not clearly known to me. The only information I have about the Sandy Bay Caravan Park is that that Mr Dutton has put on the record today and my conclusions from my knowledge of caravan parks generally would be similar to the conclusions drawn by Mr Dutton. However, using that broader based knowledge that I might have may not be a relevant exercise in the context of an application to determine whether or not this award applies to the structures that exist at the Sandy Bay Caravan Park that Mr Dutton variously described as a self-contained cabins, units, on site vans.

20 From my knowledge of caravan parks, I would say that those terms are broad enough to be encompassed by this award but, again, I'm guilty myself then of taking quantum leaps in reasoning because I haven't seen the premises and I might need to and I might be asking the commission to.

30 PRESIDENT: I guess the logical extension of what you're saying is that we should all, not necessarily spend a night at the Sandy Bay Caravan Park, but at least have a viewing of the premises.

MR EDWARDS: I've always been very conscious of people talking, president.

35 PRESIDENT: It'll give them something to talk about, perhaps. No, we won't do that.

MR EDWARDS: There's lots of rumours and innuendos and whisperings that go on anyway but that's one we could do without.

PRESIDENT: I think what you're saying makes a bit of sense because, I must say, I'm not familiar with caravan parks full stop.

5 MR EDWARDS: Whilst my personal life isn't a matter for discussion in the commission, I can say that I very frequently use a similar establishment or establishments on the north west coast every weekend or every second weekend during the summer and I would unequivocally agree with the assessment made by Mr Dutton in that context, that they are no different and they are motels by anything other than name.

10 That's borne out by the words, I believe, that are used in the award. I'd like to talk about the award somewhat in a moment but I just flag at the moment that it may well be necessary for us to look at the Sandy Bay Caravan Park to form a view, whether or not the words used in the award have the meaning that I believe they do.

The second point that needs to be made from the T30 decision by President Koerbin, was that

20 *It must be understood that in presenting an argument in support of or in opposition to a disputed construction relating to an award provision it is not permissible to seek determination of the matter on merit; that is, on the basis of what one party or the Commission believes the provision in question should mean.*

25 In other words, we are limited to the actual words used in the award and what they mean in their ordinary English usage and indeed in context of the award taken as a whole, that being the one doctrine that's not extrapolated in T30 as the doctrine of generous construction which is the one, I submit, ought to be added and has subsequently been added by the former president of this commission, President Westwood.

The third doctrine is, that:

35 *Provided the words used are, in the general context of the award and its application to those covered by its terms, capable of being construed in an intelligible way, there can be no justification for attempting to read into those words a meaning different from that suggested by ordinary English usage.*

That's directly consistent with the point I've just made.

Fourth: An award must be interpreted according to the words actually used. Even if it appears that the exact words used do not achieve what was intended, the words used can only have attributed to them their true meaning.

5 And I will be putting the proposition to the commission, that I think that is one of the positions we're in today, that the words used, or the words that should have been used are perhaps two different things and they don't mean what they were intended to mean and therefore perhaps a remedy to this matter may not be
10 an interpretation.

At the end of the day, it may well require a careful reconsideration of the award and the words used.

Fifth: If a drafting mistake has been made in not properly expressing the intention of the award maker, then the remedy lies in varying the award to accord with the decision given.

Sixth: Where genuine ambiguity exists, resort may be had to the judgment accompanying the award as an aid to discovering its true meaning.

20 And there's little to assist in that context.

Seventh: It is not permissible to import into an award by implication, a provision which its language does not express. The award being a document which is to be read and understood by persons not skilled in law, or versed in subtleties of interpretation, any omission or imperfection of expression should be repaired by amendment rather than by implying into it provisions which are not clearly expressed by its language.

The then president went on to say:

30 *These then are some of the more important guidelines to be understood by those wishing to bring before the Commission disputed matters relating to interpretation of award provisions.*

35 The current application lodged by the Sandy Bay Caravan Park calls for an interpretation of clause 7, which is definitions, Division B, which is described as food, beverage, housekeeping. The most recent version of the award that I have available to me, in doing my very brief research ready for today, was No. 3 of 2000 Consolidated, which I think is the most recent.

PRESIDENT: Yes, it would be.

MR EDWARDS: It was notified in the Tasmanian Gazette on 4 October 2000. I go to Clause 7 - Definitions, which commences, I believe on page 6. It appears to be broken down in a number of
5 ways. The first is described as Division A, which is a bold entry in the centre of the page, but it doesn't tell us what Division A is.

PRESIDENT: Thank you. I have been looking through the award trying to find that.

MR EDWARDS: One could take an extension and go back to
10 the Arrangement clause on page 3 and say that Division A there used on page 6 is the same as the Division A referred to in the heading in the centre of the Arrangement clause on page 3, being a reference to hotels, taverns or wine saloons but -

PRESIDENT: That appears to be the only description of
15 divisions.

MR EDWARDS: Well, it is but it's a guess and again it's an extension and a quantum leap in reasoning that isn't based on the words used in the award. If you go then to page 15, you have reference to Division B, which Mr Dutton in his application
20 describes as, food, beverage - housekeeping, which of course Division B is not, even though that is the subheading or appears to be a subheading under Division B. Again, Division B isn't tied back in any way to the same terminology used on page 4 of the award in the Arrangement clause, which talks about Division B
25 applying to motels.

Now, again, one can take the assumption that the two are synonymous with each other but to be fair it is only an assumption. If you then move through to page 21, we have a category called, Miscellaneous, which I would add doesn't appear
30 in what's called Division A.

I'm not sure whether Miscellaneous applies to the award as a whole and therefore what were called Divisions A and B or given that the heading is consistent with things like leisure activities on page 20 or administration front office on page 19 and indeed,
35 food, beverage - housekeeping on 15, as being subdivisions of Division B, in which case it would only apply to Division B, or does it apply to Division A as well. There are some issues there that I would have thought perhaps would apply throughout the award but there are others, perhaps no.

Then it defines a thing called a motor inn and motel. I can find no other reference to the term, motor inn and motel, throughout the award. So we seem to have a definition of something that doesn't exist. Whether Mr Dutton's establishment is a motor inn and motel may well end up being problematic because the term is not used in the award. Division B of the award applies to motels, is a motel, a motor inn and motel, or not?

It's my submission at this stage that the terminology used in the award is at best, clumsy. More properly, in many respects, I think, erroneous. I'll be the first to admit that the research I've done to this point in time on this, given that this file was handed to me at 4.45pm on Friday, has been fairly small. However, I don't believe the term, motor inn and motel, can necessarily be taken as being synonymous with each other even though when one goes to dictionary definitions of the term, motel, we find that it is in fact an amalgam of the words motor and hotel and therefore, motel, and is defined as: *a hotel near a main road, intended for overnight stops by motorists with extensive parking facilities*. That seems to me to fit fairly comfortably with an establishment of the type I envisage in my mind's eye, that Mr Dutton is referring to. But again, I'm taking that quantum leap in guessing what Mr Dutton's establishment looks like.

That definition I just read then was from Chambers Combined Dictionary Thesaurus and the other one I'd refer to is the Collins Paperback English Dictionary which defines a motel as: *a roadside hotel for motorists*. Given that hotels are covered by Division A, creates another imbroglio that I don't wish to tease out at the moment. I think we've got enough to worry about.

I think the first place we need to start, president, is with the scope clause of this award. To determine whether or not an award has application to any premises, I think you need to first go to Clause 2 - Scope of the award which is on page 3, and it says:

This award is established in the industry of:

(a) *an hotel or motel;*

(b) *a tavern or wine saloon.*

The award provides no further assistance on the term, motel, and therefore that term needs to be given its ordinary English expression, which I would suggest are, at the very least, the two that I've read into the transcript being the Collins and the

Chambers definitions of the term, motel, and I will table both of those definitions so that people have them in front of them.

PRESIDENT: I'll mark the two documents as one exhibit, **EXHIBIT TCCI.1.**

5 MR EDWARDS: Thank you, president. I'll be quite honest, I searched two other dictionaries we have in the TCCI office as well and neither of which referred to the term, motel, which I found quite extraordinary.

PRESIDENT: They've been around for a while, I think.

10 MR EDWARDS: Yes, indeed. We have an award that applies to a motel, amongst other things. So far as this exercise is concerned, it's our submission, consistent with that, I think, of Mr Dutton, that the term we were looking to define is that of, motel.

15 According to the award, that applies within Division B of the award, if I take note of Clause 3 - Arrangement. The term, motel, which we have through the dictionary definitions is: *a roadside hotel for motorists or a hotel near a main road intended for overnight stops by motorists with extensive parking facilities.*

20 The question I think really for determination as to whether or not Sandy Bay Caravan Park falls within the term, motel, of this award is, is that the sort of establishment that Mr Dutton is operating. If it is, then it's quite clear that the scope of the award is certainly broad enough, in fact, more than broad enough to
25 pick up the establishment that Mr Dutton is running.

If that's right, the next question becomes, are there classifications in the award that would apply to the particular category of employee that Mr Dutton asks the question about in his application for interpretation, that is, cleaners.
30 Notwithstanding the opinion expressed in Commissioner Imlach's correspondence, I would say, very clearly, that on page 16, the first dot point at the top of the page, general cleaning duties, is more than expansive enough to pick up the work of cleaners. In fact, if it doesn't, I'm not sure what it does refer to.

35 The question now is, what motel means. I went to the award for assistance in what purported to be definitions applying to Division B and came across the motor inn and motel which seemingly, according to the definitions in the dictionaries are almost the same thing and are probably saying the same thing

twice. But if that is intended to define the area of industry covered by the term, motel, and I'm not sure that it is but if it is and broken down to its very most basics, motor inn and motel means and includes an accommodation establishment, and I'll
5 leave out the bit in brackets for the moment, where accommodation is made available to paying guests.

All the rest of the definition talks about, something that may be provided which includes food and liquor. But it only, may be, so it's not necessary for something to come within this definition for
10 there to be food and/or liquor.

The question is, if this is a definition of motel, is Sandy Bay Caravan Park an accommodation establishment where accommodation is made available to paying guests and I think it's quite trite to ask that question because the answer is
15 unequivocally, yes, of course it is, that's exactly what it exists for.

What comes over the page, which is the only other arguably relevant part of this definition is something that it also includes but doesn't mandatorily include. For the purposes of this
20 discussion, I take that no further for the moment. However, I would say, that my view would be that the term, holiday flats/units is broad enough to cover self-contained vans, cabins and the like as described by Mr Dutton in his submission which described the nature of the business that he operates at Sandy
25 Bay.

That leaves me in the position -

PRESIDENT: Can I just ask you, in the first part of that - if we're calling it a definition, it talks about the Restaurant Keepers or Licensed Clubs Award and it talks about: *An accommodation
30 establishment shall not include any establishment covered by the jurisdiction* - is that saying that there are restaurants or licensed clubs that have accommodation or is that one of those statements that really means nothing?

MR EDWARDS: I think what it's giving - I presume there could
35 possibly be accommodation establishments covered by the jurisdiction of the Restaurant Keepers or Licensed Clubs Award because otherwise that is saying nothing.

PRESIDENT: That's why I'm asking.

MR EDWARDS: Licensed Clubs, I believe that would be possible.

PRESIDENT: They could have accommodation, could they?

MR EDWARDS: There are certainly licensed clubs that provide accommodation. Restaurants, I'd be more doubtful.

PRESIDENT: Maybe some of them should but I can't think of any off the top of my head that do.

MR EDWARDS: I've found it necessary on occasion.

PRESIDENT: If you are of the view that some licensed clubs have accommodation that makes a bit of sense.

MR EDWARDS: What I would say is that for the purposes of this exercise, what the award is doing is giving primacy to the Restaurant Keepers and the Licensed Clubs Award over this award and it would be my submission, although I don't have the information with me, that Mr Dutton's establishment fits neither of those but my friend, Mr Tullgren, is probably more familiar with both of those awards than am I and may have a different view. I might take that issue further if it becomes necessary.

The award to me appears to be saying that it applies to a motel which term is either is or is not provided within the definition of motor inn and motel and given what I've said about the doctrines of construction enunciated by President Koerbin, perhaps it is not because certainly the term, motel, is not directly synonymous with motor inn and motel, bearing in mind those four words are used together and in fact quoted together in the definition, or in the alternative where we have to rely on the normal common English usage of the term, motel, which is defined in the two dictionary definitions which I've provided which is basically a road side hotel for motorists, on the one hand, or a hotel near a main road intended for overnight stops.

I suppose one then needs to ask the question of what the term, hotel, means and I must admit, my research time was not sufficient to go down that path. Whether it's defined by this award, I couldn't be certain but even if it is - well the term, hotel, tavern or wine saloon, collectively, is defined on page 15 and the only extension that it draws is that in each case that refers to licensing.

PRESIDENT: Yes.

MR EDWARDS: So if you have something that is unlicensed that provides accommodation and it seems to me that it's not unreasonable to suggest that a caravan park that has free standing units falls within that definition.

5 I'm unable at this stage, in the absence of more precise information about the operations of Mr Dutton's park or indeed the many others throughout the state that are going to be caught by any interpretation made - and my suggestion would be, if it becomes necessary following this afternoon's
10 proceedings, that the commission view at least a selection of caravan parks to do no more, probably, than get a picture in your mind's eye of these cabins, self-contained units and on site vans to which Mr Dutton refers.

15 As I say, I use them fairly frequently myself and I've got a picture in my mind's eye but I'm not sure that that translates to the terminology that Mr Dutton has used.

PRESIDENT: It's your view though, is it, that Division A talks about establishments that have some sort of liquor licence?

MR EDWARDS: That appears to be the intent.

20 PRESIDENT: Mr Dutton's premises would be excluded. I presume it doesn't have a liquor licence?

MR DUTTON: That's correct.

PRESIDENT: You're saying, are you, that there's no way Division A would apply?

25 MR EDWARDS: I guess on looking at the term, hotel, tavern or wine saloon. What I haven't checked is whether or not those five words are used in combination anywhere else in the award. What I will say is, they are certainly not used in that combination in the scope clause of the award. There is an
30 alternate combination, the same words, but not in that combination but they are used in the heading for Division A in Clause 3 - Arrangement, which refers to hotels, taverns or wine saloons. I suppose my submission would be, given that that definition refers to licensing, then Division A would not apply.

35 PRESIDENT: That that's a requirement for Division A.

MR EDWARDS: That would appear to be the case, yes.

PRESIDENT: A question that has no relevance what so ever to the final outcome of this, is there an industry of hotels and motels or is it not the hospitality industry?

5 MR EDWARDS: It's a subcomponent, I think of the hospitality industry. There's no doubt that it is part of the hospitality industry.

PRESIDENT: I could come to terms with the hospitality industry. I have difficulty with hotel and motel industry. I just thought I'd ask.

10 MR EDWARDS: I have a vision from my past of the hotel industry.

PRESIDENT: I wasn't looking at that though. Thank you.

MR EDWARDS: I think that's about as far as I'd be prepared to take it today, except -

15 PRESIDENT: So your position basically is that prima facie you support what Mr Dutton has said but because of the likely implications of this, that there should be some further investigation?

MR EDWARDS: Broader consideration, yes.

20 PRESIDENT: Yes.

MR EDWARDS: I suppose I'd just add one thing, that in the event that the question of the actual classification is in question, and I don't believe it would be, but at page 22 there is a definition of a thing called, persons not otherwise provided for, a
25 perennial catch-all, which is someone who has had more than three months service with an employer. I don't know what would apply for the first three months. Presumably, they're award-free.

If it is found that Mr Dutton's establishment does fall within the term, motel, then clearly, at least with someone with more than
30 three months' service there can be no doubt about the coverage of the award so far as the classification is concerned. The first three months might be a little more problematic.

PRESIDENT: Yes, I hear what you say.

35 MR EDWARDS: But after three months, I think there could be no doubt and really I'm not in a position, president, to take that discussion much further today, unfortunately.

PRESIDENT: All right. Thank you for that anyway. I'll hear from Mr Tullgren and then perhaps from Dutton and then we'll decide just how big we're going to make this exercise. Mr Tullgren?

5 MR TULLGREN: President, I might address that first. Our position would be that the matter should be disposed of today. Mr Dutton has had an application for interpretation of this award into the commission for some period of time. He is the proponent of the interpretation. He's got a responsibility to prove
10 today, or to put what evidence and submissions he chooses to make to you today. It is not a proposition where this becomes some sort of compendious travelling circus, even if it's around Hobart, looking at caravan parks. The parties have to come to this commission and provide what detail they think are
15 appropriate to support their case and the matter is determined.

It is not a proposition where if this matter, while this is not a court - if this matter were subject to some judicial finding or interpretation before an appropriate court, their Honours wouldn't be being whisked around Hobart or Tasmania looking
20 at matters. The parties come to the court, put their argument and the court determines the matter. We say, relevantly, that that should be the case in this situation.

This is not a matter that's been brought on at short notice and even noting what Mr Edwards says, down to the precise perhaps
25 millisecond at which he was given the brief on Friday, with the greatest respect, that might be an internal problem about how things are allocated but this matter has been around for a long time and while I have some sympathy with my friend about getting flicked things at the last minute, as we've all had done
30 and said, there it is, it's very difficult, I would submit, nigh impossible to then come along and say, well, I've had a very short period of time to look at this, my submission is that we support that of the applicant in the proceedings but we think you should go off and do a number of other things.

35 I think that's just a little bit red hot. Or it is red hot and it's something we would oppose because, clearly, the provisions of the Act are clear about what the interpretation is, how it's to apply and Mr Dutton's put his submission, he's made a judgement that that's the submission he chooses to put and
40 with respect, he stands or falls as we all do by those submissions. That would be our respectful submission in relation to that balloon which has been sent up this afternoon.

Turning to the application in detail, the union appears to argue that the Hotels, Resorts, Hospitality and Motels Award cannot apply to or cover a person employed to perform work in a caravan park. We intend to show that on any clear reading of the award it cannot and has not covered persons employed in caravan parks.

The relevant federal award is the Motels, Accommodation and Resorts Award 1998 and I'd seek to tender a copy of the coverage of that award.

10 PRESIDENT: This is an extract from the award?

MR TULLGREN: It's from Osiris.

PRESIDENT: Yes, okay. **EXHIBIT LHU.1.**

MR TULLGREN: Going to clause 6.1, which is headed, Industry, we see that the scope goes to motor inns or motels and then provides a comprehensive and possibly exhaustive list, none of which are caravan parks. The industry coverage is comprehensive and goes to a vast number of manifestations of accommodation but clearly not caravan parks.

It is to be noted that the award at clause 6.2.1 applies in Tasmania. Further, it is to be noted that the terms of clause 6.1.1 in relation to what is covered are the same as those under the state award. The applicant advances no reason or evidence to show why, when the terms of the two clauses are relevantly the same, why one would read into the state award coverage of caravan parks when it is not included either in the federal or the state awards.

Turning to the making of the current state award, we say it's necessary before continuing to pause to consider how the current state award came to be in the terms that it is. The current award is titled the Hotels, Resorts, Hospitality and Motels Award. The current award gained its name in 1989 when the award then known as the Hotel and Motel Keepers Award was varied. The variation altered the title of the award and I'd seek to tender an extract of the Hotel and Motel Keepers Award.

35 PRESIDENT: **EXHIBIT LHU.2.**

MR TULLGREN: The following observations, we say, are relevant. Firstly, the award was made arising in matter T2181 of 1989. Secondly, the award was a consolidation. Thirdly, it was award No. 4 of 1989. Fourthly, the definition of motor inn and

motel was on page 7 of the award which is on the second page of the exhibit. Fifthly, the definition does not refer to caravan parks.

5 I now turn to the variations made to the award in 1989 and I'd seek to tender a copy of that.

PRESIDENT: **EXHIBIT LHU.3.**

MR TULLGREN: The title of the award was altered to what it is today and that's the Hotels, Resorts, Hospitality and Motels Award. Second, the matter arose out of matter T2146 of 1989.
10 Thirdly, the award superseded No. 4 of 1989, which has previously been tendered. Fourthly, the definition of motel, motor inn and motel was not altered.

The award was further varied in 1991 to, among other things, specifically amend the definition of motor inn and motel and I'd
15 seek to tender a copy of an extract of that.

PRESIDENT: **EXHIBIT LHU.4.**

MR TULLGREN: In turning to that first, the title of the award was altered to what it is today, as I've said, and when we go to it, relevantly the variations sought to bring it into line with the then
20 federal motels award and the definition, which is contained on the third page of the exhibit, is in exactly the same terms as that of the federal motels award. The greatly altered definition which seeks to provide a comprehensive and possibly exhaustive list of areas of coverage does not include caravan parks.

25 All manner of accommodation from serviced apartments to holiday ranches are covered but not caravan parks. It's a canon of statutory construction that where general matters are referred to in conjunction with a number of specific matters of a particular kind, the general matters are limited to things of like
30 kind to the specific matters, the words derived meaning from the context in which they appear. And to assist the commission with that, we would seek to tender a judgment of the High Court.

PRESIDENT: **EXHIBIT LHU.5.**

MR TULLGREN: It's the authority of *Thomas Plunkett v William Smith* which is found at Volume 14 of the Commonwealth Law
35 Reports commencing at page 76. This is a High Court judgment dealing with an appeal from the Supreme Court of Western Australia concerning the challenge to the validity of a municipal council by-law dealing with the construction of buildings.

What is relevant to us is that the by-law and the section of the enabling legislation provided quite specific reference to many matters including what buildings could and could not be made of and I draw the commission - and I won't read it but I draw the
5 commission's attention to page 70, lines 5 to 11 of the judgment.

The construction and size of buildings was also covered again at page 70, lines 17 to 26, but did not provide for a power in relation to the material roofs were constructed of, only the covering, the area of specific challenge. His Honour the then
10 Chief Justice Griffith in reviewing the specific provisions and particularly at page 80, the second full paragraph said, that they contain:

*Express provision as to the materials of walls, etc. They show still more clearly the extent to which it was intended
15 that these matters be governed.*

At the top of page 81 the Chief Justice said:

*I do not think that in this context they can be extended to cover matters which are intended to be excluded from the specific provisions I have referred to [he refers to the Latin title which I won't quote] is, I think, particularly applicable
20 to such a case.*

The same reasoning is applicable in this case. If it had been intended to specifically include caravan parks, it would have been done. Failing this specific inclusion there is no room for
25 attempting to argue some general intention concerning this matter. Applying this canon to the present case, caravan parks are not of the same class as those specified in the definition. If this was not the case, then the ability to read into the definition coverage of caravan parks would make the reference to the
30 specific types of activity otiose. If it was intended to include caravan parks it would be reasonable to believe that a specific reference would have been included. It beggars belief, in our respectful submission, that while redrafting the definition the parties considered all manner of inclusions but forgot caravan
35 parks.

The only plausible explanation and therefore the only inference that can be drawn was that the parties decided not to include caravan parks. The inference is all that stronger when one considers what occurred in 1985. On 20 June 1985 the then
40 Federated Liquor and Allied Industries Employees Union of Australia, a predecessor of the Australian Liquor, Hospitality

and Miscellaneous Workers Union, made application to vary the then Hotel and Motel Keepers Award to among other things, vary the coverage of the award and I seek to tender a copy of that application to vary.

5 PRESIDENT: **EXHIBIT LHU.6.**

MR TULLGREN: As can be seen, it was given the T number 165 of 1985.

Turning to the body of the application, the second page shows that the intention was to replace the then existing industries coverage with a new coverage which at (f) was to include caravan parks. The matter came on for hearing on 29 July 1985 before a full bench consisting of the then deputy president and commissioners Gozzi and Watling as he then was.

The transcript occupies 92 pages. Much of the transcript is taken up with the submissions made by Mr Sherry then representing the union. At page 92 the matter was adjourned sine die by consent. What is interesting is that my friend, Mr Edwards, had a starring role in those proceedings appearing for various employers and he supported the adjournment at the time. The matter was never relisted or brought on by either party and was in fact withdrawn by the union in 1991 or 1992.

We see that a specific application to include caravan parks was made but never pursued by any party. It is clear that the issue of inclusion of caravan parks was being considered from mid 1985 but was never pursued in relation to varying the extant state award or trying to include a caravan park provision in any variation made to the federal or subsequently the state award. It would be startling indeed if something not covered by the federal award was being covered by the state award on the basis that there is a long history that the state award is in fact a mirror of the federal award both the Federal Hotels and Federal Motels Award being the hotel and motel -

PRESIDENT: So there is an acknowledged nexus is there between the two?

35 MR TULLGREN: Yes, and that's been the subject of various applications over the years that have been made.

PRESIDENT: So this particular application, after 92 pages of transcript, was adjourned by consent?

MR TULLGREN: Yes.

PRESIDENT: And not proceeded any further?

MR TULLGREN: No.

PRESIDENT: The application was withdrawn or not?

MR TULLGREN: It was -

5 PRESIDENT: I don't know whether you can withdraw it but you didn't wish to proceed any further.

MR TULLGREN: No, and it was the then secretary, Ms Huxtable, advised this commission or the registrar that the matter was being withdrawn or not being proceeded with.

10 PRESIDENT: All right. Thank you.

MR TULLGREN: It would also be all the more startling considering the state award is relevantly in the same terms as the federal award. All this shows, in our respectful submission, that caravan parks are never covered by the award and are not
15 covered now.

Looking at the terms of the award, the scope of the award is set out in clause 2 of the award. That clause says, and I quote: *This award is established in the industry of a) an hotel or motel, or b) a tavern or wine saloon.* The award is arranged in such a manner
20 that clauses 1 to 8 deal with administrative and coverage matters as well as containing the definitions and the all-important wage rates.

Clauses 9 to 47 deal with, as the award says: *Conditions for Employees in Division A - Hotels, Taverns or Wine Saloons.*
25 Clauses 48 to 85 deal with as the award says: *Conditions for Employees in Division B - Motels.* There are no provisions in this award for any conditions, either general or specific to apply to caravan parks. Despite the moderately disingenuous submissions of Mr Edwards, that the definitions which are
30 headed Division A and Division B have - or possibly have no relationship to the structure of the award, it is quite clear that the award is divided into a Division A and Division B and that the shorthanding of those in the definitions was to make a Division A and Division B.

35 PRESIDENT: And that's what it means.

MR TULLGREN: Yes. And what's reinforced then is in the end of Division A and Division B there are the definitions of the hotel,

wine saloon or a motel and motor inn which reinforce the proposition.

It would be a distraction to entertain my friend's argument that perhaps they don't mean what they say or that it is not clear. It is beyond, we say, any doubt that they are.

Clause 6 which is the parties and persons bound provides at subclause (a) that the award is binding on: *all employers (whether members of a Registered Organisation or not) who are engaged in the industry specified in Clause 2 - Scope.*

This is the industry of hotels, motels, wine saloons and taverns.

Now, you posed a question to Mr Edwards in relation to the industry. It is perhaps one of those things that have occurred over the years that the hospitality industry has become a general term but clearly this award and its long history was based on the fact that there was an industry of hotels - and there still is. I'm at a slight disadvantage perhaps at least to one person here, it's that I'm a teetotaller so that my visiting of hotels is perhaps quite limited, but my limited understanding and visits to them would indicate that there are hotels of a variety of types and that there is an industry or sub-industry of hotels as there is of motels. But even if I'm wrong on those matters, we say nothing turns on it because clearly not in this commission but in the other commission to which you operate, these matters have been the subject through rules applications, through quite extensive interpretation. I choose not to bore the commission rigid with those, but -

PRESIDENT: I'm familiar with some of them.

MR TULLGREN: - these matters have been addressed. So that the industry is clearly identified and understood. Further, at Clause 7 - Definitions, provides at page 15 the definition of hotel, tavern or wine saloon. I won't read that, I just take the commission to that.

Also provided in the same clause at page 21 is a definition for the purposes of the award of motor inn and motel and I again don't take the commission to that. Neither definition comprehends a caravan park. The definition of hotel refers to premises conducted under the provisions of the *Licensing Act*. That statute is now known as the *Liquor and Accommodation Act 1990* and it was given Royal Assent on 16 January 1991.

To assist the commission further, I seek to tender some extracts from the legislation.

PRESIDENT: **EXHIBIT LHU.7.**

5 MR TULLGREN: The Act regulates the sale of liquor in Tasmania and section 3 is headed Interpretation which in effect defines the various phrases and words that are used in the statute. Section 6 provides that liquor licences may include either 'a general licence' which is provided at section 6(a)(i) or 'an on licence' which appears as defined in section 6(a)(ii).

10 Section 7 defines a general licence and a general licence is defined as: *the sale of liquor between 5.00am and midnight on any day on the premises specified and a licence for consumption on or off those premises, and (b) the sale of liquor at any time to a resident of the premises specified in the licence and any premises*
15 *which those premises form part of.*

These are the two forms of licence call-up in the definition on page 13 of the award. The Sandy Bay Caravan Park does not have either type of licence. I think that's common ground.

20 The definition of motor inn and motel at page 19 of the award is exhaustive in the lists of activities to be covered and I won't go to those but it is clear by looking at it. The one thing that stands out is the definition does not include caravan parks. Clearly we say again if it was intended to include caravan parks it would have said so.

25 It's clear on the face of it, we say, that the award was never intended to cover caravan parks.

Now having said that, it's necessary to determine what a caravan park is. Caravan park is not a term of art, it's a popular expression and it's to be construed in its popular strengths. In
30 the United Kingdom of Great Britain and Northern Ireland, *The Caravan Sites and Control of Development Act 1960* defines a caravan as: *Any structure designed or adapted for human habitation which is capable of being moved from one place to another whether by being towed or by being transported on a motor vehicle or trailer.* Further, the same Act at section 29(1)
35 defines caravan site as: *Land on which a caravan is stationed for the purpose of human habitation and land which is used in conjunction with land on which a caravan is stationed.*

The source for these definitions is Halsburys Laws of England Volume 42 page 272 paragraphs 317 to 319.

5 Habitation is defined in the Shorter Oxford Dictionary as: *A place of abode, a dwelling place, a house or home.* These definitions refer to permanent accommodation, not accommodation of a short term or temporary nature which is that said to be covered by the award. In fact, permanent accommodation is prohibited as I'm instructed at the Sandy Bay Caravan Park by the owner - the Hobart City Council.

10 The term, caravan park, has been judicially considered in a number of cases and the first one of those is Humphreys and Latrobe Valley Caravans - and I'd seek to provide a copy of that to the commission.

PRESIDENT: **EXHIBIT LHU.8.**

15 MR TULLGREN: In this matter, his Honour Judge Starke had to determine the meaning of caravan park in relation to two convictions entered by a magistrate relating to an alleged breach of a local government planning scheme. As the head note on page 434 says, *there was evidence that about 20 per cent of*
20 *caravan parks have a sales and service attached and about 90 per cent hire out caravans.*

At page 437 - the third full paragraph - his Honour observed that the expression: *'caravan park' is a popular expression and is to be construed in its popular sense.* The operative test being the
25 hire out of caravans. His Honour discharged the orders of the learned magistrate on the basis that the activity complained it was bound within the operation of the caravan park.

The applicant in this matter operates a caravan park as described in the evidence before his Honour Justice Starke.

30 Now turning to the next authority.

PRESIDENT: **EXHIBIT LHU.9.**

MR TULLGREN: The next authority is the matter of *Fyson v The Chairman of the Town Planning Board* which is to be found at Volume 22 of the Australian Law Reports commencing at page
35 117. This decision is a decision of the then Chief Justice of the Northern Territory in relation to a dispute concerning the use of land within the area of the Darwin Town Plan as a caravan park contrary to the plan. At page 117, Chief Justice Forster said:

5 *Of central importance is the meaning assigned to the words caravan park. I am unable to find a dictionary definition but I should suppose that in common parlance caravan park is an area of land with marked spaces designated for the parking of caravans with access to a source of power supply for each and probably with a building or buildings containing ablution, laundry and lavatory facilities although these later facilities may not be present.*

10 The description fits the activities at the Sandy Bay Caravan Park even if there might be other - the accommodation might be described in various ways.

Turning now to the next authority.

PRESIDENT: **EXHIBIT LHU.10.**

15 MR TULLGREN: The next authority is re *Asplin v The Department of Industry and Technology* which is to be found at Volume 9 of the Australian Law Notes and which is a decision of the Administrative Appeals Tribunal concerning entitlement to certain fuel rebates. The tribunal held in the third full paragraph that the caravan park comprised residential premises and that
20 the applicants were eligible to receive a rebate in respect of diesel fuel purchased for the residents.

25 The principle is that the caravan park is not a hotel, motel or similar and in fact the ordinary meaning of a caravan park we say according to the Macquarie Dictionary is: *A supervised area where caravans may park or be hired.* This is to be contrasted with the definition of motel in the same dictionary which is: *A roadside hotel which provides accommodation for travellers in self-contained serviced units with parking their vehicles.* Motel is analogism combining the word 'motor' and the word 'hotel' with
30 the result to mean new structures for motorists as extinct from existing hotels.

Websters Collegiate Dictionary defines motel to mean: *A building or group of buildings used as a hotel in which the rooms are directly accessible from an outdoor parking area.*

35 Such definitions cannot apply in the case of the Sandy Bay Caravan Park. The definition refers back to an hotel but with the provision that the accommodation is normally self-contained. The units are serviced and there is ability for motor vehicles.

Now even if there are some units that might fit into this category, the fact is there is the hiring out of caravans and in fact as Mr Dutton puts, there are 16 vans and 16 units. It is clear there is an equal division but that it is a caravan park.

5 The Macquarie Dictionary again defines a flat as meaning: *a suite of rooms, usually on the one floor, forming a complete residence.*

The same dictionary defines residence to mean: *the place in which one resides; a dwelling place the act or fact of residing.*
10 Further, the same dictionary defines unit to mean: *home unit, (in a block of flats or motel) a self-contained suite of rooms.*

Such definitions cannot apply to the applicant in this matter. The caravans which are parked there fall within the definition of a caravan park. That is the principal use regardless of what else
15 may be there. No one is able to reside at the Sandy Bay Caravan Park. The lease arrangements, as I say I'm instructed by the Hobart City Council, does not permit permanent living at the caravan park.

Turning to the issue of the interpreting of the award. In
20 construing the true meaning of an award like any other instrument with legal force, the task requires an approach according to the actual words used and their plain ordinary English meaning.

My friend, Mr Edwards, has referred to the decision of President
25 Koerbin in matter T30 of 1985. I apologise but I'll repeat some of his submission. In that decision the learned president set down seven, what he called, observations regarding the manner in which awards should be interpreted. The essential observations are the third and fourth. The third observation is:

30 *Provided the words used are, in the general context of the award and its application to those covered by its terms, capable of being construed in an intelligible way, there can be no justification for attempting to read into those words a meaning different from that suggested by ordinary English*
35 *usage.*

The fourth observation is like and says:

An award must be interpreted according to the words actually used. Even if it appears that the exact words used

do not achieve what was intended, the words used can only have attributed to them their true meaning.

5 There can be no argument the words of the clauses discussed must be read according to anything but ordinary English usage, that is, on their face and have attributed to them their true meaning.

10 Further, we say, that the words subject to the dispute not only carry on their face the meaning we advance but were meant to carry that meaning, that is to say, the intention of the clause was as we advanced. It's not a case to try to contort words to say something that they do not, which is effectively the submission that Mr Edwards puts and to a lesser extent, as I apprehend the submission, Mr Dutton puts.

15 To reinforce that view I'd seek to tender a decision of the full commission of the Industrial Commission of New South Wales in court session.

PRESIDENT: **EXHIBIT LHU.11.**

20 MR TULLGREN: This is a judgment of the full court in the matter of *Bryce and Another v Apperley*. The court consisted of their Honours Justices, Hungerford, Marks and Schmidt. It's to be found at volume 82 of the Industrial Reports commencing at page 448 but more relevantly for us at pages 452, 453 and 454. It provides a concise review of the relevant authorities.

Turning to page 452, the commission says:

25 *In our view, in construing the true meaning of an industrial award, like any other instrument with legal force, the task requires an approach according to the actual words used and their plain, ordinary English meaning. As was said by Kelleher J [and I won't refer to the citation].*

30 They go on to quote the judgment:

35 *The meaning is to be ascertained primarily from a consideration of the words actually used and, while it is proper to pay regard to the surrounding circumstances and the purposes for which the provision was intended, this cannot justify a meaning being given to the words which they are not fairly capable of bearing. Particular words or expressions, have a special trade significance, however, may need to be construed in that light.*

Going on, the full bench, then went on to quote the judgment of his Honour Judge French in the federal court in the *City of Wanneroo v Holmes* where they quote his Honour to say:

5 *It is of course no part of the court's task to assign a meaning in order that the award may provide what the court thinks is appropriate [and he refers to the AWU v The Graziers Association as authority for this].*

And he goes on to say further:

10 *Indeed it has been said that a tribunal interpreting an award must attribute to the words used their true meaning even if satisfied that so construed they would not carry out the intention of the award making authority [and he then quotes the authorities].*

15 The commission then goes on, over the page at page 453, to quote the decision of his Honour Judge Olney in *Norwest Beef Industries v AMIEU* where he says:

20 *If it be the case that the correct approach to the interpretation of an industrial award is to read the document itself and give the words used their ordinary commonsense English meaning, then the first task in every case will be to determine whether the words used are capable in their ordinary sense of having an unambiguous meaning. If that question is answered in the affirmative then the further consideration of the expressed or supposed*
25 *intention of the award making tribunal does not fall to be considered.*

The majority of the full bench in this case took that view when they said:

30 *It is now trite law that when the meaning of language read in its ordinary and natural sense is obtained it is not necessary or indeed permissible to look to the intention of the parties.*

His Honour Justice Olney then goes on to say:

35 *In my opinion the majority of the Full Bench has correctly stated the basic principle to be applied in the interpretation of industrial awards. Any other conclusion would lead to industrial anarchy. If the contrary were the case every employer, union official and indeed each employee would need to have available to him the expressed views of the*

award making tribunal whether they be expressed before or after the making of the award in order to determine the intention of the tribunal whilst the award itself would be rendered meaningless.

5 We say that the commission must resist any argument that in
essence seeks to argue that the words or clauses subject to the
dispute have a meaning other than which can be clearly
established on their face. The causes in question when given
their ordinary meaning are intelligible and meaningful. Further,
10 the commission cannot entertain an argument based on the
merits, that is, what one party or the commission believes the
provision in question should mean and in fact, that's partially
what Mr Dutton seeks to do with his submissions, as I
understood them, in relation to the hospitality industry and the
15 operation of awards, dictating hours.

Nor can the commission be distracted by any argument that
might claim that the result of our argument is to create some
perceived unfairness.

20 Taking this a step further, we say that when you also look at
interpreting words that have an ordinary every day meaning, this
must be done with commonsense and experience of the world
and we would rely on the observations of the learned authors in
Statutory Interpretation in Australia Third Edition commencing
at page 67. When the award was made caravan parks existed.
25 They are not a new development. In fact, the existence of
caravans goes back to earliest recorded history. The old
testament regularly refers to the caravans. Where they parked
them were not caravan parks, in that sense. The new testament
also refers to caravans. So, they're not something that has
30 recently appeared.

Further, we say that in interpreting the award the approach
should be that of reading the award according to its current
meaning and we don't quote but we draw the commission's
attention to the observations of the learned authors, again on
35 page 68.

A caravan park, we say, is not a generic term. It has a fixed
meaning as shown in the authorities referred to and cannot be
contorted in an attempt to align it to be included in the
definition of motel, flat or unit. The definition of motel is such
40 that it must be read as intentionally excluding the inclusion of
caravan parks. The activity of caravan parks, as we have said,
existed prior to the award, but was not included in the

definition. This is supported by the history of the award provided by the union.

5 It is to be noted that a number of the other parts of the definition, including resorts, health farms, guest houses have also existed for a long time and the question becomes, why is it that these have been included and caravan parks have been omitted. It was not by error because there is no evidence of that, it was deliberate. Caravan parks could have been included if the parties so chose. They did not.

10 In concluding, we say that the commission should find that because the matter was not specifically addressed in the award, the parties intended that the status quo should remain. There is no warrant for contorting the meaning of the existing definition to include something that clearly does not fit within the
15 definition and was not sought to be added by the parties despite ample opportunity being available.

The meaning of caravan park has not altered and there is no justification for now trying to slide it into the award through this back door method. We say further, that there is no basis for the
20 commission to depart from the approach to award interpretation by giving words their ordinary meaning as set out in the decision of President Koerbin.

Finally, we say that the commission should dispose of this matter today on the basis that the parties have had sufficient
25 notice to come along and put their case in detail and that then the commission should exercise its powers to make what interpretation it so makes. But we would say that to put this matter beyond doubt, the commission should exercise the power to retrospectively make a determination which is open to the
30 commission and which has been exercised by former presidents in relation to matters to try to stem any potential for further litigation or argument about what may have occurred in the past on the basis that a prospective determination has been made.

35 PRESIDENT: Is there an award in Tasmania that you say covers caravan parks or are they award-free?

MR TULLGREN: The Miscellaneous Workers Award does, on the basis that what it provides is in shorthand, that it applies to any work covered by the award that's not covered by another award.

40 PRESIDENT: So is that general provision?

MR TULLGREN: Yes. And it has a specific classification of cleaner, which I understand is what's given rise to this but it has a number of others like cook and so on but if it's cleaner, then it's specifically there and the Miscellaneous Workers Award would apply.

Save for any further questions or any other things, that would be our submission.

PRESIDENT: Thank you. Mr Dutton?

MR DUTTON: My only observation would be with the last question, President, of yours at the latter end there, where it was stated that the only classification it could come under would be the Miscellaneous Workers. The Miscellaneous Workers Award of course could take no cognisance of the fact that in the leisure industries there's a 24-hour, seven day continuous day. The Miscellaneous Workers Award has severe penalty rates for any work periods on weekends or bank holidays.

PRESIDENT: It possibly does but that's not relevant to the exercise that we're doing. It's an application for an interpretation, so I need to focus on the clause that you want an interpretation for and address that. I'm aware that there are penalty rates and all sorts of provisions in most awards of this and other tribunals.

MR DUTTON: A catch-all provision of this nature can provide quite silly results.

PRESIDENT: What do you mean, a catch-all provision?

MR DUTTON: A provision such as this in Miscellaneous Workers, which states that -

PRESIDENT: We're not talking about the Miscellaneous Workers Award, we're talking about the Hotels, Resorts, Hospitality and Motels Award.

MR DUTTON: Indeed. Should you wish me to address you on that matter?

PRESIDENT: That's the application that's before me, an interpretation of a provision in that award. That's what I need to hear you on.

MR DUTTON: It had crossed my mind whether or not the application should have been more in the terms that Sandy Bay

Caravan Park could be classified as a resort under the award itself.

PRESIDENT: Under this award? The Hospitality Award?

MR DUTTON: The Hospitality, as a resort. There again -

5 PRESIDENT: What's the definition of a resort?

MR DUTTON: There again, being no definition of resort.

MR TULLGREN: It isn't, but it falls into the - with respect, my friend would invite - if he wants to do that in the future if he's unsuccessful, we potentially have the same sort of argument
10 although resort is one of those words that has infinite meaning.

PRESIDENT: It could mean all things to all people, I guess.

MR TULLGREN: Yes.

PRESIDENT: But you're not putting that argument. Your
15 arguing that the caravan park of which you're a part-owner, I think you said, should come under, I think it's called, Division B, and the issue is about, as I understand it, someone who was doing some cleaning work for you - the original dispute?

MR DUTTON: The issue arose from that matter with the
20 cleaning. The matter I'm putting before you this afternoon, president, is that the circumstances of the Sandy Bay Caravan Park are, it operates as a motel in all but name. And there can be no dispute about that.

PRESIDENT: Well, I think there is a dispute about it. Why
25 don't you call it the Sandy Bay Motel then and that might fix the problem. I'm being facetious.

MR DUTTON: That is my position.

PRESIDENT: That's all you want to put?

MR DUTTON: Yes.

PRESIDENT: You don't want to respond to anything that Mr
30 Tullgren has put?

MR DUTTON: I might make one comment. There was a point made that caravan parks have been - the term, caravan, has been handed down through generations and that caravan parks have been known for a very long period of time. That is indeed

the case but caravan parks in the last 20 years have changed dramatically from being mainly residential almost like you might say gipsy encampments to being 99 per cent of them now being wholly tourist orientated without permanent residents within them and totally catering to the tourist overnight trade.

PRESIDENT: I guess the biblical definition of caravan may not necessarily fit into the concept that we now look at as a caravan park. I acknowledge that point.

MR DUTTON: Certainly it wouldn't apply to the modern cabins.

PRESIDENT: It depends where you want to put the camels, I suppose.

MR TULLGREN: I might say, just to make it clear, despite my flourishes from ..(inaudible).. I wasn't suggesting that the Sandy Bay caravan park equated to anything that might have established around Jerusalem around 2000 years ago although I've only read -

PRESIDENT: You weren't there then?

MR TULLGREN: No, I've only read about those matters.

MR DUTTON: What about the Miscellaneous Workers' Union in those days.

MR TULLGREN: We've not been there that long.

PRESIDENT: Did you want to add anything else briefly?

MR EDWARDS: Yes, I will be brief, president. The first point I'd make is that the trip down memory lane provided to us by Mr Tullgren I certainly found intriguing but of little assistance in terms of giving the true meaning to the words used in this award.

We know what the words were in the previous awards and we know which words were there and weren't there now but what is important for today's matter, that is, an interpretation of the words used in this award is that we've got to decide what those words used today really mean. So the trip down memory lane, including the visitation to the Australian Industrial Relations Commission's award called the Motels, Accommodation and Resorts Award has been interesting but no more.

Whether or not a form of words is used in a federal award won't make one jot of difference at the end of the day in interpreting a set of words in a state award unless that precise set of words have been subject to an interpretation by presumably in this case the federal court and certainly Mr Tullgren hasn't taken us to that and therefore I think we can reasonably assume that it hasn't.

I think those previous exhibits, LHU through to and including 4, were useful so far as tracing a history but they don't provide any meaning to the terms used in the award today.

The application made by Mr Sherry, the then state secretary of the Federated Liquor and Allied Industries Employees Union of Australia, Tasmanian Branch, identified as LHU.6 sought to amend the award presumably in respect to the scope clause and indeed to Parts 1, 2, 3 in a number of respects which are identified within the exhibit that's been put forward.

Again, that's useful to explore what the now ALHMWU sought to do at that time but it's completely non-determinative in this matter because it doesn't tell us what the words mean. If you have a look at the document, we can now take the assumption from Mr Tullgren's submissions that things like villas, inns, lodges, chalets, are excluded from the meaning of this award.

Now I'm sure that's not his submission but that is the logical extension because they, too, aren't named in the award as currently written but are included in LHU.6 and the natural extension of his argument is that those things also are not covered; apartments, cottages, cabins, villas, camps. But also included in Mr Sherry's application were the terms, flats and units, which are in today's form of words.

What this shows us is that the world has moved on and things are a bit different. But again, it's not assisting us to understand the meaning of the words in the award today. It's useful to trace history and it's useful by way of interest only for those of us that might be scholars of what's happened in the past in the awards of the Tasmanian Industrial Commission.

This question, president, turns quite narrowly, in our submission, on the definition that exists in the award on page 21.

PRESIDENT: That's the definition of motor inn and motel?

MR EDWARDS: Motor inn and motel and it appeared to me that Mr Tullgren's argument revolved around that definition as being a definition amongst other things of a motel.

5 Now that definition, which I presume is trying to identify the scope and coverage of the award which is identified in clause 2 by the use of, amongst others, of the word 'motel' says: *means and includes an accommodation establishment where accommodation is made available to paying guests.*

10 Now if I am correct in that interpretation or that is the form of words that this turns on, and I'd suggest to you quite strongly that it is, then that's exactly the establishment that Mr Dutton is operating. He has an accommodation establishment, that is, a place where accommodation is offered and it's offered to people who pay for it as guests.

15 PRESIDENT: Well why then isn't it included in the second part of the definition?

MR EDWARDS: Well, nor too are a very large range of other types of accommodation establishments. In any event, I would say, if you go to the bottom of page 21, president, it said: *It shall also, subject to the foregoing, include the following.*

PRESIDENT: Yes.

MR EDWARDS: So it's not prescriptive and that's where I think Mr Tullgren has fallen into error in his argument. He has painted the list of inclusions on page 22 as being determinative, all-encompassing, and clearly they are not. On the words used in the award, the simple English words used, at the bottom of page 21, it also includes but that does not in any way cut down the breadth of the earlier description which says it includes an accommodation establishment *where accommodation is made available to paying guests.*

PRESIDENT: So are you saying that you read that a serviced apartment is, for the purposes of this award, a motor inn and motel.

MR EDWARDS: Yes.

35 PRESIDENT: That's how you're reading it?

MR EDWARDS: Yes, it is.

PRESIDENT: And even though caravan park isn't named there, you say a caravan park, for the purpose of this award is a motor inn and motel because the definition of motor inn and motel, is a place that includes an accommodation establishment?

5 MR EDWARDS: Yes.

PRESIDENT: So does a bed and breakfast accommodation place - I think that's what you call them - get picked up in this, too?

10 MR EDWARDS: Well, that's an interesting question. My submission would be yes. Mr Tullgren's submission would almost appear to have to be no, nor would villa units or cottages or apartments which are excluded. They were included in LHU.6 which was Mr Sherry's application in the past. Do we take the assumption that Graham Court Villas in Newtown -

15 PRESIDENT: The who?

MR EDWARDS: Graham Court Villas - it's a villa unit complex -

PRESIDENT: Right.

20 MR EDWARDS: - which hires out villa units is excluded from this award. I mean the short answer is no and of course they're not and are meant to be incorporated within it, but villa units aren't named as such. So an extension of Mr Tullgren's argument would see them excluded.

25 Now, I don't wish to go down an exercise of determining what should or shouldn't be included or could or couldn't be.

PRESIDENT: No, I'm interested -

30 MR EDWARDS: But I do want to say that because they're not listed doesn't change anything because that's an indicative list, but it doesn't change the first part of the definition which tells us what motor inn and motel is. It's an accommodation establishment made available to paying guests and then goes on and gives by way of extrapolation that it also applies to these things, not that the earlier part is these things, but it also includes - these are additions to the general or to the actual
35 definition and not even extrapolative of the term itself. They are additions. It shall also include.

PRESIDENT: I'm interested in the proceedings that created 92 pages of transcript that went nowhere and you were mentioned in dispatches because some of the - at least one I can see - one of the sorts of accommodation places referred to is in the definition. I'm just wondering whether you can recall why the matter didn't proceed?

MR EDWARDS: I won't pretend my memory is anywhere near that good, president, and I didn't review that case in preparation for today.

PRESIDENT: No.

MR EDWARDS: I'm prepared to if the commission would like me to address you on that.

PRESIDENT: I'm interested because I -

MR EDWARDS: However, if I did, Mr Tullgren's other argument about disposing of this matter today would clearly not be possible.

PRESIDENT: Well, no, but it won't be much longer than that because it has been around regrettably for quite some time.

MR EDWARDS: I don't wish to delay the matter, president, at all.

PRESIDENT: No, but I am interested because it talks about the sort of place that we're looking at and there usually is a reason why these things happen. That reason could be that the parties agreed that it was already covered; the parties agreed that it was inappropriate that it be covered. It could be one of a number of things.

MR EDWARDS: Given that that matter was adjourned without solution I suspect it's neither of the above, president.

MR TULLGREN: I can assist the commission and I'll quote from page 92 which is the submission of my friend, Mr Edwards, and he says - quote:

No, not really Mr Deputy President. I would simply indicate that it was my intention to ask for an adjournment so that the conferences can take place between the parties. It would seem to me that it may be appropriate if the unions concerned were to get together, before meeting with the employers, to sort out their areas of disagreement over

5 *coverage, eligibility rules, et cetera. There seems little point in the employers meeting with Mr Sherry and/or Mr Hanlon if they still have arguments between themselves as to who is going to cover these people. I believe that if they are able to sort those out then we would be in a position to meet with Mr Sherry and/or Mr Hanlon, depending on how they intend to resolve their differences, to examine in detail Mr Sherry's propositions that he has been through today and which he intends to pursue later.*

10 *That is the way that I would envisage this matter going. I would suggest that the unions firstly get their own house in order, as it were, before approaching the employers.*

The deputy president finishes by saying:

15 *No doubt Mr Sherry has taken note of your comments. Fundamentally, everyone supports the proposal for an adjournment at this time. In those circumstances the Commission will grant the adjournment and await advice as to the progress before we set another date.*

The matter was adjourned sine die.

20 And five, six years later the matter was withdrawn and there was no further activity.

PRESIDENT: Yes. One could read a lot into those final words.

MR TULLGREN: Yes.

25 MR EDWARDS: I'm nothing if not consistent, president. I still believe unions ought to get their act together.

PRESIDENT: Yes. The application isn't as clear cut as it looks on the paper.

MR EDWARDS: That one?

PRESIDENT: This 1985 application.

30 MR EDWARDS: No, obviously it would appear to revolve at least in part around some sort of demarcation dispute between the AWU and the Liquor Trades Union for the shorthand term.

So I'm not sure whether the commission would require me to read that transcript and make myself familiar with it again.

PRESIDENT: No, I think that satisfies my interest.

MR EDWARDS: In which case, I return to and probably even virtually finish on the point that the award as currently written covers accommodation establishments where accommodation is made available to paying guests. It covers that by way of Division B of the award through the definition to which Mr Tullgren has taken you at length and which I've taken the commission to at length on page 21 and I would make the submission again, that that broad statement is in no way able to be read down, the way Mr Tullgren would have us read it down, by the provisions that appear over the page which he says limit the award to those areas listed. In fact the converse is true. The award covers accommodation establishments where accommodation is made available to paying guests and it also includes those things that are described over the page at page number 22, being unlicensed private hotels, serviced apartments, resorts - blah-blah-blah. I won't go right through them, they're quite plain.

PRESIDENT: So prior to that amendment to the definition, are you saying that caravan parks were still covered by the award under the definition of motor inn and motel?

MR EDWARDS: If I could just briefly revisit LHU.2, 3 and 4, as I recall it, my answer to that would be yes. Certainly if I go through them, LHU.2 would certainly lead to that conclusion. As I recall, Mr Tullgren's submissions, LHU.3 made no change to that definition and I'll take that at face value and say my answer would therefore be the same. At LHU.4 the inclusion occurs and you will note that that in that one it's even indented to make it quite plain that it's something additional to.

PRESIDENT: And I think Mr Tullgren said that that picks up the expanded definition perhaps in the federal award.

MR EDWARDS: Well, not in identical terms if I look at LHU.1. But I mean, we are dealing with two entirely different legislative enactments as the underpinning statutory law which gives rise to the making of the award and that's why the two could be different.

PRESIDENT: I mean as Mr Tullgren has said, there's a recognised nexus between the two, I think. Is that your understanding?

MR EDWARDS: Well, I can find many references in transcript over the years that suggest both that there is and there is not. I

seem to recall Mr Sherry making an application at around about the same time LHU.6 was being prosecuted to increase rates in the state award in advance of those in the federal award.

5 PRESIDENT: Well, rates of pay don't have anything to do with nexus.

MR EDWARDS: Apparently yes. Then Deputy President Robinson took quite a dim view of that application and made his views very plainly known to Mr Sherry at the time.

10 So, I mean, it appears to me that various people take solace in the argument of nexus when it suits and of course seek to rebut it at times when it doesn't suit.

15 I would be the first to admit that there is a close association between the two awards and has been over the years. There is no doubt the original foundation of the Hotels and Motels Award, as it then was, was the federal Hotels Award on the one hand, or Hotel and Retail Liquor Industry Award, I think it was then called and the Motels Award on the other. But of course that's changed over a period of time. We now have a situation where federally we have a completely different statutory enactment
20 which would see the paring down of awards through a range of factors.

PRESIDENT: I don't think it changes the coverage of the award.

25 MR EDWARDS: No, it doesn't but it does change the contents of the awards where they can no longer have direct nexuses - no, nexus is already a plural term, I think.

PRESIDENT: Nexi.

30 MR EDWARDS: No, there's no such thing as nexi I've been told, it's just nexus and therefore the question of nexus is again one that's useful to discuss but it can't be determinative because what we need to decide is what these words in this award mean being those words at 21 and I think it's quite plain what they mean I've already made it quite plain, I think, on the record what they mean. Any other meaning applied to those words is to go
35 outside giving them their normal English usage which Mr Tullgren has implored you to do, as have I. I think when you give those words their normal English usage in the context of the Sandy Bay Caravan Park, you can only be led to one conclusion,

and that is, that that form of words is broad enough to pick up Sandy Bay Caravan Park and indeed any other caravan park.

PRESIDENT: So any establishment that charges people -

MR EDWARDS: For accommodation, yes.

5 PRESIDENT: - or for paying guests for accommodation that doesn't have a liquor licence in some form or other is a motel or a motor inn.

MR EDWARDS: It fits into that definition on the words used. I'm not saying that was the intention. I'm saying that is what the
10 award means and that's what we're here to determine.

PRESIDENT: Yes. I understand what you're saying. I just wanted to make sure that was what -

MR EDWARDS: I renew the request I made earlier for a visitation, if required, of the premises. I hear what Mr Tullgren
15 has had to say and I've certainly done my best this afternoon to ensure that this matter can be disposed of expeditiously. It's not my wish to delay the matter. Even if out of session the commission were to invite Mr Tullgren and myself and Mr Dutton to visit any establishment you may care to name or he
20 may care to name just on a very quick - I'm not talking about a detailed investigation.

PRESIDENT: I don't know whether that - if - that's why I just wanted to clarify your submission. If your submission is that
25 any accommodation premise that charges guests for that accommodation and does not have a liquor licence in some form or other, for the purposes of this award is a motor inn or a motel. So it wouldn't really matter, I guess, what we looked at, if the criteria was that guests were charged for the accommodation, they would be in a motor inn or a motel, as
30 defined in there.

MR EDWARDS: I have no difference with you on that, president.

PRESIDENT: All right.

MR EDWARDS: That's precisely the point.

35 PRESIDENT: Good. Thank you.

MR TULLGREN: With your indulgence, president, just a couple of points. Firstly, in relation to this issue of a nexus. While I don't seek to take it too far, the point to be made is that when you look in the definition in LHU.1 which is from the Motels Award, save for the exclusion of the words 'function areas, convention centres or like facilities' the variation to the award is exactly the same. That's the intention.

Secondly, my friend is attempting to obfuscate on the matter because the question is, what is the definition of a motel, and a motel - it's clearly been - there is a dictionary definition as there's not statutory definition, and there's a definition of caravan park. He is attempting to simply blend the two together by saying, well, motel means anywhere where there is accommodation.

The award talks about the definition being of a motel includes, and it's the definition of motel. The operative term is motel or motor in but in this case motel. The same, with respect, in relation to Mr Dutton's business, the operative term is what is a caravan park, not simply seeking to make a series of assertions about that it might cover all manner of activities. They were the only points I wish to make.

PRESIDENT: All right. Thank you. Unless anyone wants to add anything else, I propose to consider what has been put. I am very tempted to dispose of the matter today but it does have some implications and I am aware that there is an applicant waiting in the wings for this to be determined, so - I think it was a 'she', can pursue her application. So accordingly, I intend to address it as soon as I possibly can.

Thank you for your submissions. The commission is adjourned sine die.

HEARING ADJOURNED SINE DIE 3.45pm